

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 14, 2011

In the Matter of SIMS/DAVIS/GREEN, Minors.

No. 300843
Wayne Circuit Court
Family Division
LC No. 08-484055

Before: MURRAY, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence and in ordering termination of respondent's parental rights. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); see also *In re Rood*, 483 Mich at 126 n 1 (CAVANAGH, J., concurring in part); MCR 3.977(K). After finding statutory grounds exist for termination, the trial court must order termination of parental rights if it finds that to do so is in the child's best interests. MCL 712A.19b(5). A trial court may consider evidence on the whole record in making its best interest determination. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K).

MCL 712A.19b(3)(c)(i)(g) and (j) provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The conditions that led to adjudication included respondent's unsuitable home environment and financial instability. In addition, respondent's criminal lifestyle endangered the children by exposing them to daily contact with a drug dealer and drug abusers. Respondent had 18 months to provide a stable home environment, achieve financial stability, and understand her children's emotional needs.

There was substantial evidence that petitioner provided respondent with ample services to facilitate reunifying the family. Offered services included psychiatric and psychological evaluations and mental health assessment through JAC and Clinic for Child Study, transportation assistance, individual counseling, domestic abuse counseling, parent partnering, job search assistance, housing referrals, GED completion support, supervised parenting time, and random drug screenings. The court properly concluded that respondent had not complied with or benefited from her case services plan. Specifically, she failed to obtain and maintain suitable housing and a regular legal income. Respondent also failed to benefit from individual counseling to improve her relationships with her children and turn away from the drug environment that led, in large part, to the children being removed from her custody. Moreover, respondent never demonstrated the capability to grasp, much less repair, the emotional damage she inflicted on her children by exposing them to an unfit home environment, which included the presence of a convicted drug dealer known as "Wild Dog" whom the children greatly feared. The court correctly found that respondent had failed to address the issues that brought her children before the court. These proofs satisfied all three statutory grounds for termination. See MCL 712A.19b(3)(c)(i)(g) and (j).

Respondent argues that she made substantial progress under her treatment plan, contending that she completed parenting classes, was actively participating in all forms of counseling, had obtained a legal source of income and suitable housing, and had taken responsibility for selling marijuana. These assertions do not square with the court record, and the trial court's finding to the contrary is well-supported by the record. Although it is undisputed that respondent completed parenting classes and actively participated in all forms of court-ordered counseling, barriers for family reunification continued to exist because she had not benefited from those services. A parent must not only comply with services offered; he or she must also benefit from the services such that he or she has acquired improved parenting skills to the point where the children are no longer at risk in the parent's home. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). The trial court heard persuasive testimony from the caseworker that respondent did not benefit from reunification services. There was clear evidence

that respondent's parenting skills remained poor and that her actions had caused irreparable psychological damage to her children. Further, respondent minimized the emotional damage the children suffered because of her criminal, unstable, and neglectful lifestyle.

Respondent failed to comprehend why her children feared returning to her home, as respondent continued to live in the same unsuitable house she occupied from the inception of this case until just prior to the termination hearing. Further, respondent's most recently obtained housing was also inappropriate. According to the caseworker, the children could not be returned that day or in the immediate future. The evidence was clear that respondent remained financially unstable. She did not have employment and had not pursued a possible claim for Social Security benefits. Respondent testified that at the time of the police raid she was selling marijuana because she did not have any income, that at the time of the termination hearing she continued to be unemployed, had only been employed for a few months over the past two years, did not have any other legal source of income, and had not completed a GED. The record evidence supported the trial court's conclusion that there was no reasonable expectation that respondent would be able to properly care for the children within a reasonable timeframe.

Respondent argues that the only reunification barrier was the older children's refusal to participate in family counseling, thus contributing to the deterioration of the family relationship. She contends that the trial court should have ordered them to participate, rather than conditioning termination "on the whim of the older children," and that petitioner failed to make reasonable efforts toward reunification because the older children did not cooperate with counseling. This argument misstates the trial court record and is groundless. Poor familial relationships were not the sole barrier for family reunification, and in any event, petitioner encouraged all of the children to participate in family counseling. The caseworker also arranged for weekly visitation, encouraged all of the children to attend, and instructed the foster parent to continuously encourage all of the children to participate in family counseling and regular visitation and provide transportation for them to do so. The caseworker even drove to the foster parent's home and offered to drive the children to visits. Petitioner's efforts were reasonable yet the older children refused to participate. When the court ordered that the children could choose not to participate in family counseling, the court also ordered that the children were to continue to deal with family issues in individual sessions with the same therapist who provided family therapy. The court properly employed individual therapy services as an avenue for family reunification when family therapy with the older children would be futile. The record shows that the older children's emotional bonds with respondent could not be mended—not because petitioner failed to make reasonable efforts, but because the children themselves recognized respondent's entrenched parental shortcomings.

The trial court also correctly determined that terminating respondent's parental rights was in the children's best interest. MCL 712A.19b(5). There is no question that respondent expressed love for her children, but it is equally clear that her good intentions were not sufficient to protect and care for them. Respondent was unable to properly care for her children and keep them out of harm's way because her inadequate parenting skills, emotional limitations, and home environment largely remained unchanged. Also, none of the children, including the younger ones, expressed any desire to be returned to respondent. The court record, as a whole, supported a finding that respondent would be unlikely to properly care for her children in the long term.

Respondent argues that the trial court improperly considered the older children's testimony when it made its best interest determination. However, determination of children's best interests is based on the record as a whole. *In re Trejo*, 462 Mich at 353. Although respondent denied that she sold drugs on more than one occasion, had smoked marijuana with her older children, continued to be involved with Wild Dog, and remained in a drug dealing environment, the trial court stated that it found respondent's credibility suspect. The court reasonably believed the two older children who said that Wild Dog was still a part of respondent's life and that he frightened them. In addition, the court concluded that respondent had not learned how her actions had impacted her children. The trial court reasonably concluded that there had been a significant material breakdown of the parent/child relationship, which was "very artfully articulated by the two oldest children." Deference is given to the trial court's determination because it had the special opportunity to judge the credibility of the witnesses who appeared before it. *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Further, once a statutory ground for termination is established, a court may consider the advantages of an alternative home (foster/potential adoptive) for the child in evaluating the child's best interests. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009). Respondent's older children testified that all of the children wanted to remain with their caretaker who provided them with a safer and better environment than respondent. The trial court properly considered the children's testimony when determining their best interests. Reviewing the whole record, and assessing the credibility of all witnesses, the trial court reasonably concluded that respondent was incapable of providing a long-term stable home environment and proper care for the children. Termination of her parental rights was in the children's best interest.

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence or in its best interests determination.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause